

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

CHRISTOPHER M. DAVIS,
Plaintiff,

No. C 13-3524 NJV (PR)

v.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

SAN JOSE POLICE DEPARTMENT, et.
al.,

Defendants.

Plaintiff, who appears to be a pretrial detainee at Santa Clara County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
2 omitted). Although in order to state a claim a complaint "does not need detailed factual
3 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a
5 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
6 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
7 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
8 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
9 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
10 framework of a complaint, they must be supported by factual allegations. When there are
11 well-pleaded factual allegations, a court should assume their veracity and then determine
12 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
13 679 (2009).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
15 elements: (1) that a right secured by the Constitution or laws of the United States was
16 violated, and (2) that the alleged deprivation was committed by a person acting under the
17 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 **B. Legal Claims**

19 Plaintiff states that he was apprehended by two police officers on October 15, 2012,
20 who used excessive force that caused a broken arm and they then falsified reports.
21 Plaintiff identifies the police officers but provides no other information regarding the arrest
22 or alleged excessive force. Plaintiff's bare allegations are insufficient to state a claim under
23 *Iqbal*. "A claim has facial plausibility when the plaintiff pleads factual content that allows the
24 court to draw the reasonable inference that the defendant is liable for the misconduct
25 alleged." *Iqbal*, 556 U.S., at 678. The complaint will be dismissed with leave to amend for
26 Plaintiff to provide more information regarding the circumstances of the arrest, the specific
27 actions of the Defendants and the charges of the underlying arrest.

1 In drafting his amended complaint, Plaintiff should take note of the following legal
2 standards. An allegation of the use of excessive force by a law enforcement officer in
3 effectuating an arrest states a valid claim under 42 U.S.C. § 1983. See *Rutherford v. City*
4 *of Berkeley*, 780 F.2d 1444, 1447 (9th Cir. 1986), overruled on other grounds by *Graham v.*
5 *Connor*, 490 U.S. 386 (1989). Excessive force claims which arise in the context of an
6 arrest or investigatory stop of a free citizen are analyzed under the Fourth Amendment
7 reasonableness standard. See *Graham v. Connor*, 490 U.S. 386, 394-95 (1989).

8 "To determine whether officers used excessive force during an arrest, courts
9 balance 'the nature and quality of the intrusion on the individual's Fourth Amendment
10 interests against the countervailing governmental interests at stake.'" *Luchtel v.*
11 *Hagemann*, 623 F.3d 975, 980 (9th Cir. 2010) (quoting *Graham*, 490 U.S. at 396).
12 Relevant factors for consideration in this case-by-case inquiry include "'the severity of the
13 of the crime at issue, whether the suspect poses an immediate threat to the safety of the
14 officers or others, and whether he is actively resisting arrest or attempting to evade arrest
15 by flight.'" *Id.* at 980 (quoting *Graham*, 490 U.S. at 396); see, e.g., *Cameron v. Craig*, 713
16 F.3d 1012, 1022 (9th Cir. 2013) (where evidence shows that plaintiff's crimes were
17 relatively minor and non-violent, officers had no reason to suspect plaintiff or any of her
18 known roommates would pose a threat to officer safety, and plaintiff did not resist arrest, a
19 jury could find that force used was greater than was reasonable under the circumstances
20 when six to ten deputies entered plaintiff's residence with guns drawn early in the morning,
21 pointed weapons at her, grabbed her by the arms and shoulders, pushed her in the back
22 down a hallway, and then tightly handcuffed her); *Blankenhorn v. City of Orange*, 485 F.3d
23 463, 477 (9th Cir. 2007) (police officers used excessive force when they punched plaintiff
24 and used a gang tackle and hobble restraints to take him into custody); *Miller v. Clark*
25 *County*, 340 F.3d 959, 963-68 (9th Cir. 2003) (use of trained police dog to "bite and hold"
26 suspect until officers arrived on the scene less than a minute later does not constitute
27 unreasonable excessive force under 4th Amendment when suspect poses immediate threat
28

1 to officers' safety, several attempts to arrest suspect with less forceful means are
2 unsuccessful as a result of suspect's defiance, and use of police dog is well-suited to task
3 of safely arresting suspect). These factors are not exclusive. *Glenn v. Washington*
4 *County*, 673 F.3d 864, 872 (9th Cir. 2011). The "most important" factor is whether the
5 individual posed an immediate threat to the safety of officers or others. *Id.*

6 CONCLUSION

7 1. The complaint is **DISMISSED** with leave to amend in accordance with the
8 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**
9 **days** of the date this order is filed and must include the caption and civil case number used
10 in this order and the words AMENDED COMPLAINT on the first page. Because an
11 amended complaint completely replaces the original complaint, plaintiff must include in it all
12 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
13 1992). He may not incorporate material from the original complaint by reference. Failure to
14 amend within the designated time will result in the dismissal of this action.

15 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
16 court informed of any change of address by filing a separate paper with the clerk headed
17 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
18 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
19 Federal Rule of Civil Procedure 41(b).

20 **IT IS SO ORDERED.**

21 Dated: September 5, 2013.



NANDOR J. VADAS
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

CHRISTOPHER M. DAVIS,

No. 1:13-CV-3524 NJV (pr)

Plaintiff,

v.

CERTIFICATE OF SERVICE

SAN JOSE POLICE DEPARTMENT, et al.,

Defendants.

I, the undersigned, hereby certify that on September 5, 2013, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

Christopher M Davis
DTD 940
150 W Hedding Street
San Jose, CA 95110

/s/ Linn Van Meter

Linn Van Meter
Administrative Law Clerk to
the Honorable Nandor J. Vadas